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FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5424

DATE COMPLAINT FILED: March 8, 2004

DATE OF NOTIFICATION: March 12, 2004

DATE ACTIVATED: October 14, 2004

EXPIRATION OF SOL: April 21, 2008

RAD REFERRAL: 04L-13

DATE ACTIVATED: November 8, 2004

EXPIRATION OF SOL: July 8, 2009

COMPLAINANT:

John Blair Whidden V

RESPONDENTS:

Virginia Foxx for Congress and
Carolyn Aldridge, in her official capacity as treasurer
Virginia Foxx

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441i(b)(1)

2 U.S.C. § 441i(e)(1)(A)

2 U.S.C. § 439a

11 C.F.R. § 110.3(d)

11 C.F.R. § 113.1(g)

11 C.F.R. § 111.4(a)

11 C.F.R. § 111.4(d)

2 U.S.C. § 434(a)(1)

2 U.S.C. § 434(a)(2)(A)(i)

2 U.S.C. § 434(b)(4)

11 C.F.R. § 104.3(b)

11 C.F.R. § 104.3(b)(2)(i)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. MUR 5424

A. Introduction

U.S. Representative Virginia Foxx, who represents North Carolina's 5th Congressional District, won her seat in the November 2, 2004 general election. On April 21, 2003, she announced her candidacy for this federal office, while she was state senator of North Carolina's 45th District. Her state senate committee, Foxx for Senate Committee, was active since her election in 1994, and remained so during her 2004 congressional campaign. The complaint, which is based on two newspaper articles, alleges that telephone expenses, consultant fees, newspaper and radio advertisements, membership dues, staff salary payments, and disbursements for "constituent services" were expenses of the congressional campaign, but were paid for with monies from the state senate committee account. After reviewing the federal and state disclosure reports, and the publicly available information, it appears that Respondents have committed only minor violations of Federal Election Campaign Act of 1971, as amended ("the Act"), and the amounts in violation were *de minimis*. Therefore, we recommend that the Commission find reason to believe that Virginia Foxx for Congress and Carolyn Aldridge, in her official capacity as treasurer ("the Committee"), and Virginia Foxx (collectively "Respondents"), violated the Act in connection with the allegations of the complaint, but take no further action.¹

¹ Due to administrative oversight, Foxx for Senate Committee was not notified of the complaint in this matter. Based upon the allegations of the complaint, Foxx for Senate Committee may have been entitled to notification of the complaint in order to give it the opportunity to submit a response.

B. Factual and Legal Analysis

1. Respondents Appear to Have Committed Only Minor Violations of the "Soft Money" and Personal Use Rules.

Because Ms. Foxx continued to run campaign committees for both her state senate position and her election to federal office, the complaint questions whether her congressional campaign was helped by expenditures made by her ongoing state senate committee account. Federal candidates and officeholders, or entities directly or indirectly established, financed, maintained or controlled by them, are restricted from soliciting, receiving, directing, transferring, or spending "soft money," i.e., non-federal funds that are not subject to the limitations of the Act. 2 U.S.C. § 441i(e)(1)(A). Further, transfers of funds from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited. 11 C.F.R. § 110.3(d).

This Office has reviewed both the state and federal disclosure reports, and it appears that the Respondents did not use "soft money" to pay for the congressional campaign's Web site consultant fees or staff salary payments. Respondents admit that through an inadvertent mistake, a small amount of congressional campaign telephone expenses were paid for with state senate committee funds; however, the amount in question was immediately refunded. The newspaper and radio advertisements were made for the benefit of the candidate's state senatorial position, and did not refer to, or relate in any way to, her congressional campaign. With respect to the disbursements for "constituent services" made from the candidate's state senate committee, there is no indication that the expenditure of these funds was made for the benefit of her congressional committee. Last, the candidate may have improperly used campaign funds in connection with the payment of membership dues to a local chamber of commerce.

1 **2. Respondents Used "Soft Money" to Pay for Congressional Campaign**
2 **Telephone Expenses.**

3
4 The complaint alleges that Respondents used state senate committee funds to pay for
5 telephone expenses associated with the congressional campaign. The sole basis for this
6 allegation is a reference to a newspaper article which sets forth that disclosure reports for the
7 congressional committee do not show any expenditures for telephone expenses in 2003, whereas,
8 the state senate committee disclosure reports show "several thousand dollars" in cellular and
9 land-line bills paid through December 2003.

10 Respondents admit that \$286.71 in telephone expenses associated with the congressional
11 campaign was mistakenly paid for with state senate committee funds. Foxx Affidavit, at ¶ 3.
12 Respondents contend that the state senate committee had an existing automatic debit arrangement
13 in place with Skyline Telephone, when the congressional campaign office initially opened and
14 telephone service commenced. *Id.* Therefore, the first four months of telephone service to the
15 congressional campaign office (October, November, December 2003 and January 2004) was
16 mistakenly debited by Skyline Telephone from the state senate committee's bank account in the
17 total amount of \$286.71. *Id.* Respondents further contend that once they learned of the mistake,
18 the congressional committee reimbursed the state senate committee for the full \$286.71 amount
19 on February 18, 2004. *Id.* According to the congressional committee's 2004 April Quarterly
20 Report, it reported a disbursement to Skyline Telephone in the amount of \$286.71 on February
21 18, 2004.²

² The Committee arguably should have reported this expenditure as a disbursement to the state senate committee, not to Skyline Telephone. See Foxx Affidavit, at ¶ 3 ("... the Congressional Committee reimbursed the Senate Committee for the full amount of the phone bills for these four months. This reimbursement (\$286.71) was made on February 18, 2004.") (emphasis added).

1 In addition, Respondents set forth that Ms. Foxx used her personal cellular phone for state
2 senate committee activities since 1994, and that her state senate committee has paid the bills
3 related to her state senatorial work since 1995. Foxx Affidavit, at ¶ 4. Ms. Foxx avers that some
4 telephone calls were made on her personal cellular phone to telephone numbers in the 5th
5 Congressional District (outside her state senate district) that were for the congressional race, and
6 were paid for with state senate committee funds. *Id.* She further avers that she used her personal
7 funds to reimburse the state senate committee for \$186.30 in telephone expenses, and then
8 reported the reimbursement as an in-kind contribution from her to the congressional committee
9 on March 10, 2004. *Id.* The congressional committee's 2004 April Quarterly Report disclosed
10 that Ms. Foxx made an in-kind contribution on March 10, 2004 in the amount of \$452.54 for
11 telephone expenses. Apparently, the \$452.54 figure represents the total amount of telephone
12 expenses related to the congressional race that Ms. Foxx paid with personal funds, and includes
13 the \$186.30 in telephone expenses in question in this matter. *Id.*

14 **3. Respondents Did Not Use "Soft Money" to Pay for Web Site Consultant**
15 **Fees.**
16

17 The complaint alleges that state senate committee funds may have been used to pay for
18 consultant fees to install and maintain the congressional committee's Web site. The sole basis
19 for this allegation is that disclosure reports show that the congressional committee and the state
20 senate committee both made expenditures to Battleship Consulting, a contractor that installed
21 and maintained Web sites for both committees. Ms. Foxx's sworn affidavit sets forth that
22 Battleship Consulting installed separate Web sites: www.foxxforsenate.com³, for her state
23 senatorial activities, and www.virginiafoxx.com, for her congressional campaign. Foxx
24 Affidavit, at ¶ 5. Ms. Foxx avers that the www.foxxforsenate.com Web site was redone and

³ This Web site can no longer be found on the Internet.

1 paid for with state senate committee funds in 2003, and set up solely for her constituents to view
2 her state senate activities. *Id.* She further avers that the congressional Web site,
3 www.virginiafoxx.com, was paid for separately with congressional committee funds. *Id.* Last,
4 she sets forth that the Web sites made no reference to each other.

5 Our review of the federal and state disclosure reports shows that both the congressional
6 committee and the state senate committee made expenditures to Battleship Consulting.
7 Specifically, the congressional committee's disclosure reports show 7 payments totaling \$2,306
8 in disbursements to this contractor from September 25, 2003 through September 2, 2004. The
9 state senate committee disclosure reports reported a \$496 disbursement to this contractor on
10 August 6, 2003. Our Office has no reason to doubt the Respondents' reporting of these
11 disbursements.

12 **4. The Newspaper and Radio Advertisements Were Not Made in**
13 **Connection with the Congressional Campaign.**
14

15 Respondents admit that state senate committee funds were used to purchase three
16 advertisements printed in a North Wilkesboro newspaper on September 1, 24, and 29, 2003, and
17 one advertisement, which aired on an Alleghany County radio station in December 2003.
18 However, Respondents contend that these advertisements were similar to "constituent service
19 advertisements" which Ms. Foxx had run in prior years, and thus would have been purchased by
20 the state senate committee irrespective of the congressional campaign.

21 Respondents have provided, along with their response, copies of the three newspaper
22 advertisements in question. The advertisements merely identify Ms. Foxx as state senator for
23 North Carolina's 45th District, and provide contact information for the reader. There is no
24 mention of the congressional campaign or any of the opposing candidates. Respondents did not
25 submit a copy of the December 2003 radio advertisement script; however, they contend that the

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1 radio advertisement was a repeat Christmas greeting that Ms. Foxx made every year as a state
2 senator. We have no reason to doubt the Respondents' contentions, which were set forth in a
3 sworn affidavit from Ms. Foxx. Furthermore, according to the North Carolina General Assembly
4 Web site, www.ncleg.net, both North Wilkesboro (located in Wilkes County) and Alleghany
5 County were part of the geographic area covered by Ms. Foxx's 45th senatorial district. Given
6 these factors, the advertisements, which were paid for with state senate committee funds, appear
7 to be made solely in connection with her position as state senator.

8 **5. Respondents Did Not Use "Soft Money" to Pay for Congressional**
9 **Committee Staff Salaries.**
10

11 The newspaper article attached to the complaint, alleges that Respondents' disclosure
12 reports show "[p]ayments as late as July [2003] to an aide in Foxx's [s]enate campaign who later
13 became the spokeswoman for her congressional campaign." See David Rice, *Foes in Race for*
14 *Congress Question Foxx's Finances*, WINSTON-SALEM JOURNAL, February 22, 2004. The
15 newspaper article and the complaint fail to mention the name of this staff person or provide any
16 indication as to which entity, the congressional or state senate committee, made the payments to
17 this aide. The response, however, admits that the congressional committee's Communication
18 Director, Ms. Amy Auth, once worked for Ms. Foxx's state senate office. Her duties in the state
19 senate office were to keep mailing lists, answer letters, send congratulatory letters and manage
20 other standard constituent service work. Foxx Affidavit, at ¶ 10. The response contends that the
21 state senate committee paid Ms. Auth for the "state senate-related services" with state senate
22 committee funds. *Id.* Thereafter, the congressional committee hired Ms. Auth, and all work
23 done by Ms. Auth for the congressional committee was paid for with congressional committee
24 funds. *Id.*

The Commission may find "reason to believe" if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Act. *See* 11 C.F.R. §§ 111.4(a), (d). In this matter, however, the allegations of the complaint are conclusory and speculative. Further, we have no reason to doubt the sworn affidavit from Ms. Foxx, which sets forth that Ms. Auth was paid for her work on the congressional campaign, with funds from the congressional committee.

6. *The Candidate May Have Used Campaign Funds to Pay for Chamber of Commerce Membership Dues.*

Respondents admit that the state senate committee paid \$100 in membership dues to Yadkin County Chamber of Commerce (which is outside Ms. Foxx's senatorial district) in 2003 by mistake. Respondents contend that on February 8, 2004, they requested a refund from Yadkin County Chamber of Commerce and the reimbursement check from the Chamber of Commerce was dated February 16, 2004. Respondents further contend that subsequently, the congressional committee issued a check to the Yadkin County Chamber of Commerce on February 16, 2004 in the amount of \$100.00.

The FEC disclosure reports do not show any disbursement from the congressional committee to the Yadkin Chamber of Commerce for \$100 on February 16, 2004; however, the disbursement was beneath the \$200 itemization threshold. The congressional committee, however, did report a disbursement in the amount of \$300 to the Yadkin County Chamber of Commerce on May 25, 2004 for media expenses. No person can convert campaign funds to the personal use of a candidate. 2 U.S.C. § 439a; 11 C.F.R. § 113.1(g). "Personal use" is defined as "use of funds in a federal candidate's campaign account to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officerholder." 11 C.F.R. § 113.1(g). The term "person" includes individuals and committees. 2 U.S.C. § 431(11). Membership dues to nonpolitical organizations are considered

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1 to be, *per se*, use of funds for a personal use, except where the dues are part of the costs of a
2 specific fundraising event that takes place on the organization's premises. 11 C.F.R.
3 § 113.1(g)(1)(i)(G).

4 There is no information that the \$100 membership dues were paid for in connection with
5 any fundraising event. Therefore, it appears that the candidate may have used campaign funds
6 for personal use.

7
8 **7. *The Disbursements for "Constituent Services" Reported on the***
9 ***Candidate's State Disclosure Reports Were Not Made in Connection***
10 ***with the Congressional Campaign.***
11

12 The state senate committee disclosure reports show disbursements in the total amount of
13 \$34,746 during the 2003 calendar year. The newspaper article attached to the complaint quotes
14 one of Ms. Foxx's Republican primary opponents, Ed Powell, as stating that that this amount of
15 spending during a non-election year for a state senator "raise[s] some substantial questions as to
16 whether [these disbursements] [were] for the state [s]enate campaign or the congressional
17 campaign." See David Rice, *Foes in Race for Congress Question Foxx's Finances*, WINSTON-
18 SALEM JOURNAL, February 22, 2004. The newspaper article reports that the state senate
19 committee disclosure reports show an average of \$5,050 in spending in 1995, 1997, 1999, and
20 2001 (previous non-election years). *Id.* The newspaper article paraphrases Ms. Foxx as saying
21 that the disbursements from her state senate committee account were for constituent services.

22 The sworn affidavit from Ms. Foxx sets forth that the disbursements disclosed on the
23 2003 state senate committee disclosure reports were not used in connection with her
24 congressional campaign. Foxx Affidavit, at ¶ 11. She provides plausible explanations for the
25 increase in spending during the 2003 year as compared to previous non-election years. For
26 example, she sets forth in her affidavit that the \$10,500 disbursement to Capital Advertising

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1 appearing on her 2003 state disclosure report was for services rendered in connection with her
2 2002 state senate election campaign. The state report sets forth that the disbursement to Capital
3 Advertising was made on January 23, 2003. Therefore, it is possible that the bill for services
4 rendered in 2002 was not paid until January 2003. Next, Ms. Foxx sets forth that disbursements
5 to Aldridge Bookkeeping in the amount of \$5,700 were related to the transfer of the state senate
6 committee's accounts to a new computer system set up in 2002. *Id.* Last, she sets forth that her
7 state senate committee needed to replace a 10-year old computer at a cost of \$1,863, and avers
8 that this computer was not used in connection with her congressional campaign. *Id.*

9 This Office reviewed the 2003 state senate committee disclosure reports, and found that
10 the disbursements are itemized by description, amount and purpose. However, the disbursements
11 do not specify whether they were campaign or constituent service related. Nonetheless, after
12 reviewing the disbursements reported in the 2003 state disclosure reports, we have no reason to
13 doubt Ms. Foxx's sworn statement that these disbursements were made solely in connection with
14 her state senatorial activities, and were not made in connection with or for the benefit of the
15 congressional campaign. Further, the response itemized the largest of the expenses, and has
16 provided a sufficient explanation for the increased spending.

17 **C. Conclusion**

18 The facts do not appear to support the complaint's allegations regarding Web site
19 consultant fees, newspaper and radio advertising, congressional committee staff salaries, and the
20 general increase in the state senate committee's spending in 2003.

21
22
23
24 Therefore, we recommend that the Commission find reason to

1 believe that Virginia Foxx for Congress and Carolyn Aldridge, in her official capacity as
2 treasurer, and Virginia Foxx violated 2 U.S.C. §§ 441i(e)(1)(A) and 439a, but take no further
3 action, send admonishment letters, and close the file.

4 **II. RAD REFERRAL 04L-13**

5 **A. Introduction**

6
7 Subsequent to the activation of MUR 5424, the Reports Analysis Division ("RAD")
8 referred the Committee to this Office for further examination in connection with RAD Referral
9 04L-13, relating to the Committee's failure to disclose a significant operating expenditure on its
10 original 2004 12 Day Pre-Primary Report. Our review of the Committee's disclosure reports
11 shows that the Committee failed to comply with reporting requirements. Accordingly, we
12 recommend that the Commission find reason to believe that Virginia Foxx for Congress and
13 Carolyn Aldridge, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(4) and enter
14 into pre-probable cause conciliation.

15 **B. Factual and Legal Analysis**

16 The Committee failed to timely disclose an operating expenditure on its 2004 12 Day Pre-
17 Primary Report. The Committee reported total disbursements of \$195,353.59 on its original 12
18 Day Pre-Primary Report, and \$330,353.59 in total disbursements on its Amended 12 Day Pre-
19 Primary Report. The omitted disbursement, in the amount of \$135,000, is a 69% increase in total
20 disbursements reported on the original report ($\$135,000 \div \$195,353.59 = 69\%$). The treasurer of
21 a political committee must file reports of all receipts and disbursements in accordance with the
22 Act. 2 U.S.C. § 434(a)(1). A committee is required to file a pre-election report no later than the
23 12th day before any election in which the candidate is seeking election. 2 U.S.C.

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1 § 434(a)(2)(A)(i). The report shall disclose, *inter alia*, the total amount of disbursements, and an
2 itemization of all disbursements, including expenditures made to meet the candidate's or
3 committee's operating expenses. 2 U.S.C. § 434(b)(4)(b); 11 C.F.R. § 104.3(b)(2)(i).

4 For Ms. Foxx's July 20, 2004 primary, the Committee filed its original 12 Day Pre-
5 Primary Report on July 8, 2004, disclosing disbursements in the total amount of \$195,353.59.
6 However, the Committee voluntarily amended its report on July 13, 2004 to disclose an
7 additional \$135,000 disbursement to an advertising agency for media expenses for the primary
8 election. The disbursement total amount for the amended report was \$330,353.59. Due to the
9 significant discrepancy in the amount of total disbursements reported in the original and amended
10 reports, RAD sent a Request for Additional Information ("RFAI") to the Committee. In
11 response, on August 12, 2004, the Committee filed a second Amended 2004 12 Day Pre-Primary
12 Report adding a memo text entry to the \$135,000 disbursement which stated "[t]his transaction
13 on [sic] left off the original report by mistake."

14 The Committee did not comply with reporting requirements when it failed to disclose the
15 \$135,000 operating expenditure on the original 2004 12 Day Pre-Primary Report filed on July 8,
16 2004. The omission meant that the public lost the benefit of viewing a significant amount,
17 \$135,000 or a 69% increase, of the Committee's total disbursements over a 5-day period before
18 the primary. The earliest amendment to the report was made 7 days before the primary—5 days
19 later than is required by the Act. *See* 2 U.S.C. § 434(b)(4); *see also* 11 C.F.R. § 104.3(b)(2)(i).

20 Moreover, the disbursement was for the candidate's media expenses in a very close and
21 contentious primary race.⁴ Ms. Foxx finished second in the primary, with just 0.9 % more votes

⁴ "The campaign for the general election remained mostly civil . . . [t]he [Republican] primary and runoff [elections] featured some bruising ads." Theo Helm, *Foxx Beats Harrell Easily in 5th District*, WINSTON-SALEM JOURNAL, November 3, 2004. Ms. Foxx finished second in the July 20, 2004 primary, with 22.4% of the vote, just behind Vernon Robinson, who garnered 23.6% of the vote, and just ahead of Ed Broyhill, who finished third with 21.5% of the vote. *See* Theo Helm and Danielle Deaver, *Robinson, Foxx Top Hard-Fought 5th Race*, WINSTON-SALEM

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1 than the third place candidate. As such, she qualified for the run-off election on August 17,
2 2004. She subsequently won the Republican primary, and thereafter, the general election.
3 Accurate and complete information regarding the amount the Committee spent on media
4 expenses for the primary election should have been made available to the public for the entire
5 prescribed statutory time period. *Id.* Therefore, although the Committee voluntarily amended
6 the report, and the disclosure was made before the election, the Committee's subsequent
7 amendments to the original report did not rectify the omission.

8 Accordingly, there is reason to believe that Virginia Foxx for Congress and Carolyn
9 Aldridge, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).

10 **C. Discussion of Conciliation Provisions and Civil Penalty**

11 In addition to recommending that the Commission find reason to believe that the
12 Committee violated 2 U.S.C. § 434(b)(4), this Office also recommends that the Commission
13 offer to enter into conciliation with the Committee prior to a finding of probable cause to believe.
14 Attached for the Commission's approval is a proposed conciliation agreement. Attachment 3.

JOURNAL, July 21, 2004. Because neither of the top two candidates obtained more than 40% of the vote, a run-off election was held on August 17, 2004. Ms. Foxx beat Mr. Robinson in the run-off with 55% of the vote, winning the Republican nomination. See Danielle Deaver and Jim Sparks, *Foxx Beats Robinson in 5th District Runoff*, WINSTON-SALEM JOURNAL, August 18, 2004.

III. RECOMMENDATIONS

In MUR 5424:

1. Find reason to believe that Virginia Foxx for Congress and Carolyn Aldridge, in her official capacity as treasurer, violated 2 U.S.C. §§ 441i(e)(1)(A) and 439a, but take no further action and send an admonishment letter.
2. Find reason to believe that Virginia Foxx violated 2 U.S.C. §§ 441i(e)(1)(A) and 439a, but take no further action and send an admonishment letter.
3. Approve the attached Factual and Legal Analyses.
4. Approve the appropriate letters.
5. Close the file.

In RAD Referral 04L-13:

1. Open a MUR.
2. Find reason to believe that Virginia Foxx for Congress and Carolyn Aldridge, in her official capacity as treasurer, violated 2 U.S.C. § 434(b)(4).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Virginia Foxx for Congress and Carolyn Aldridge, in her official capacity as treasurer, prior to a finding of probable cause to believe.
5. Approve the attached Conciliation Agreement.

7. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Lawrence L. Calvert Jr.
Deputy Associate General Counsel
for Enforcement

Date:

1/31/05

BY:

Sidney Roche
Sidney Roche
Assistant General Counsel

Christine C. Gallagher
Christine C. Gallagher
Attorney

Attachments:

1. Factual and Legal Analyses (MUR 5424)
2. Factual and Legal Analysis (RAD Referral 04L-13)
3. Conciliation Agreement

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